

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

GN Docket No. 96-228

In the Matter of )

Amendment of the Commission's Rules )  
to Establish Part 27, the Wireless )  
Communications Service ("WCS") )

To: The Commission

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**COMMENTS  
OF THE  
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.**

The Industrial Telecommunications Association, Inc. ("ITA"), pursuant to the Federal Communications Commission's Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal.<sup>1</sup>

**I. PRELIMINARY STATEMENT**

1. ITA is an association organized under the laws of the District of Columbia. ITA is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 421-430 MHz and 800/900 MHz frequency pools. ITA also coordinates modification

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<sup>1</sup> Notice of Proposed Rule Making (FCC 96-441), GN Docket No. 96-228, adopted November 8, 1996, released November 12, 1996, (hereinafter "Notice").

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applications for existing systems licensed in the 800 MHz General Category pool. ITA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency pools.

2. ITA enjoys the support of a membership that includes more than 6,500 private land mobile radio communications licensees and the following trade associations:

Alliance of Motion Picture and Television Producers  
 Associated Builders & Contractors, Inc.  
 Florida Citrus Processors Association  
 Florida Fruit & Vegetable Association  
 National Mining Association  
 National Propane Gas Association  
 National Utility Contractors Association  
 United States Telephone Association.

## II. COMMENTS

3. In this proceeding, the Federal Communications Commission proposes to establish a new radio service, the Wireless Communications Service ("WCS"), to be governed by Part 27 of the rules. Radio systems licensed in the Wireless Communications Service would use frequencies in the 2305-2320 MHz and 2345-2360 MHz bands.<sup>2</sup> The Commission's proposal is in

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<sup>2</sup> In these comments, the 2305-2320 MHz and 2345-2360 MHz frequency bands, collectively, are sometimes referred to as "the 2.3 GHz band."

response to the directives from Congress set forth in the Omnibus Consolidated Appropriations Act ("Appropriations Act").<sup>3</sup>

4. The Appropriations Act requires the Commission to assign frequencies in the 2305-2320 MHz and 2345-2360 MHz bands by competitive bidding. Congress also directed the Commission to take into account the needs of public safety radio services when allocating this spectrum. To comply with the terms dictated by Congress, the FCC must begin the competitive bidding process for the new service no later than April 15, 1997 and must ensure that the proceeds from the competitive bidding process are deposited no later than September 30, 1997.

5. From ITA's perspective, there is little room for enlightened comment on the issues raised in the Notice. Unlike most FCC allocation proceedings, the Commission has little discretion with regard to the spectrum under consideration in the instant proceeding. The conditions, deadlines and revenue expectations set by Congress usurp the latitude normally available to an administrative agency in such matters.

6. While there are several existing radio services that could possibly benefit from the spectrum to be made available in the 2305-2320 MHz and 2345-2360 MHz bands, Congress has dictated

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<sup>3</sup> Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

that this spectrum must be used for services that are compatible with competitive bidding. Additionally, while the Commission's task would clearly be easier if there were adequate time for deliberate and enlightened input from the public in this proceeding, the statutory deadlines bind the Commission to a woefully short comment period.

7. ITA recognizes and understands the pressures facing the Commission in this proceeding. In the best of all worlds, the Commission should give full consideration to the spectrum requirements of all radio services, including services that are subscriber-based as well as services dedicated to internal-use communications. It would be beneficial if the Commission had the discretion to allocate the 2305-2320 MHz and 2345-2360 MHz bands using the traditional public interest standard. In this proceeding, however, at the specific direction of Congress, the relevant standard governing the FCC's actions is how best to raise \$2.9 billion for the U.S. Treasury.

8. It is clear that, in this proceeding, budgetary concerns have supplanted the public interest standard. Congress has abrogated its responsibility to foster a rational telecommunications policy that truly promotes the public interest. As a result, the Commission, of necessity, will have to adopt a set of rules premised on service flexibility and assignment of the spectrum to the deepest pockets. This result

has been preordained by Congress. So, the Commission is, in effect, compelled to state in its proposal:

In establishing the General Wireless Communications Service ("GWACS") in August, 1995, we concluded that authorizing a wide variety of services bounded only by international allocations comported with our statutory authority and served the public interest by fostering the provision and mix of services most desired by the public. Similarly, we believe that permitting this flexibility in service offerings for WCS will foster the provision and mix of WCS services most desired by the public.<sup>4</sup>

9. Given the applicable time constraints, the FCC has no recourse but to say that the public interest would be served best by flexible service offerings. In fact, there is no tangible evidence that flexible service offerings best serve the public interest, particularly when the opportunity to offer service is limited to those who have the resources to bid for the spectrum.

10. The Appropriations Act requires the Commission to use competitive bidding simultaneously to allocate the radio spectrum and assign specific frequencies. This result is in direct conflict with Congress' insistence, reflected in the Omnibus Budget Reconciliation Act of 1993, that competitive bidding should be used solely as an assignment mechanism and not as a device for allocating spectrum.<sup>5</sup> The Appropriations Act is also at odds with the Congressional directive prohibiting the FCC from

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<sup>4</sup> Notice, paragraph 9.

<sup>5</sup> Section 6002(a) of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 388 (1993).

considering potential auction revenues when making allocation decisions.

11. When the Congress binds the Commission's exercise of discretion in an allocation proceeding, the short-term result is likely to be a bad allocation decision. The long-term result is a serious erosion of rational telecommunications policy. The public interest necessarily suffers. In the instant proceeding, there is no way for the Commission to give proper consideration to allocating spectrum for vital, non-subscriber communications services.

12. Moreover, based on equitable considerations if for no other reason, the Commission would seem to have an obligation to consider the impact of the 2.3 GHz allocation on PCS and other licensees who have been induced to spend millions for their spectrum. The 2.3 GHz allocation is likely to deflate the value of the operating rights purchased by winning bidders in the PCS and 900 MHz auctions. These existing licensees were induced to bid for their spectrum without any knowledge that potential competitors would be licensed in a comparable frequency band. The 2.3 GHz allocation may significantly, and unfairly, erode the investment made by PCS and 900 MHz licensees.

13. Even the lip service that the Appropriations Act gives to public safety services is compromised. If the FCC is to have any hope of meeting the specified revenue-generation objective, it must carefully circumscribe the amount of spectrum at 2.3 GHz that is dedicated to public safety services. Thus, any positive action to accommodate the future requirements of public safety licensees will be limited, and perhaps inconsequential. The Commission's Public Safety Wireless Advisory Committee ("PSWAC") recently estimated that public safety entities will require 95 megahertz of additional spectrum over the next two decades. Any spectrum allocated for public safety in the instant proceeding will fall far short of the requirement that PSWAC projects.

14. As a practical matter, the allocation measures dictated in the Appropriations Act, as well as the implementation rules that the Commission must adopt, are inherently defective. From the standpoint of equipment manufacturers, the more definition given to a radio service, the more predictable is the equipment required to implement the service. The Wireless Communications Service, of necessity, will be defined in broad and generic terms. As a result, equipment manufacturers will have little ability to anticipate the type of equipment required by service providers and even less opportunity to incorporate cost-saving designs from other lines of equipment. Equipment costs will be higher and production times longer.

15. Moreover, to the extent that the FCC is able to craft rules to assist public safety entities in meeting their communications needs, equipment manufacturers will not be able to avail themselves of customary cost-saving measures. In a typical allocation proceeding for private radio services, the spectrum identified for public safety systems is either intermingled with the spectrum allocated for other private radio systems or, alternatively, the public safety bands are located adjacent to the bands designated for other private radio services. Such an allocation strategy maximizes the potential market for equipment and allows manufacturers to design similar lines of equipment for public safety and other private radio systems. There are two beneficial effects of this strategy: (1) manufacturers have greater incentive to produce equipment for a given band because the potential customer base is greater; and (2) when designing and producing equipment, manufacturers are able to maximize the economies of scale. These beneficial effects will not be available to manufacturers that choose to produce equipment for any possible public safety allocation at 2.3 GHz.

16. In summary, from ITA's perspective, there are several detrimental consequences of the approach outlined in the Appropriations Act for reallocation of the 2305-2320 MHz and 2345-2360 MHz bands:

*First*, the extremely strict deadlines place the FCC under undue pressure to act promptly, thereby militating against deliberate and well-considered decision-making;



*Second*, the requirement to allocate the bands through competitive bidding deprives the Commission of its customary discretion in allocation matters and precludes consideration of radio services that are not subscriber-based;

*Third*, the allocation is extremely predatory to existing subscriber-based commercial services and deflates the value of the PCS and 900 MHz spectrum already auctioned;

*Fourth*, the flexible service approach necessitated by the Appropriations Act will produce uncertainty for manufacturers and increase the cost of equipment;

*Fifth*, the accompanying budgetary expectations and other constraints limit the amount of spectrum that might be dedicated to the public safety services;

*Sixth*, the failure to make provisions for accommodating all private radio services in a manner corresponding to the public safety provisions will cause inefficiencies in equipment production and increase the cost of the equipment.

### III. CONCLUSION

17. The Congressional directives regarding the 2.3 GHz allocation place the FCC and its staff under extreme pressure to auction the spectrum promptly. The time constraints and other aspects of the Appropriations Act compel the Commission to adopt rules that will maximize service flexibility. This, in turns, produces several harmful side effects. Equipment costs will be higher. Production times will be longer. Even the Congressional support for accommodating public safety requirements may be counterproductive, because the isolated allocation for public safety will likely result in relatively high equipment costs and limit the opportunity for manufacturers to take advantage of economies of scale.

18. To the extent possible, given the limited agency discretion available in the instant proceeding, ITA urges the Commission to carefully craft the rules for 2.3 GHz to provide for consistency in telecommunications policy and a regulatory program that will be responsive to the public interest standard.

**WHEREFORE, THE PREMISES CONSIDERED,** the Industrial Telecommunications Association, Inc. respectfully submits these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS  
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